

## TEXT OF PROPOSED REGULATIONS

In the following text, underline indicates additional added text, and ~~strikethrough~~ indicates deleted text.

### § 3005. Conduct.

**Subsections 3005(a) and 3005(b) remain unchanged. Subsection 3005(c) is adopted to read:**

(c) Refusing to Accept Assigned Housing. Inmates shall not refuse to accept a housing assignment such as but not limited to, an integrated housing assignment or a double cell assignment, when case factors do not preclude such.

**Existing subsection 3005(c) is renumbered to read:**

(~~ed~~) Force or Violence. Inmates shall not willfully commit or assist another person in the commission of a violent injury to any person or persons, including self mutilation or attempted suicide, nor attempt or threaten the use of force or violence upon another person. Inmates shall not willfully attempt to incite others, either verbally or in writing, or by other deliberate action, to use force or violence upon another person.

**[Authority and Reference Unchanged.]**

**New Article 1.6. of Subchapter 4, Chapter 1 of Title 15, Division 3 of the CCR, Inmate Housing, is adopted.**

### Article 1.6. Inmate Housing

**New Section 3269.1, is adopted to read:**

### **§ 3269.1. Integrated Housing.**

An inmate's race will not be used as a primary determining factor in housing an institution's inmate population. Inmate housing assignments shall be made on the basis of available documentation and individual case factors to implement an Integrated Housing Policy (IHP). Individual case factors include, but are not limited to, such factors as:

(1) History of racial violence.

(2) Commitment offense/time to serve.

(3) Classification score.

(4) Custody level.

(5) Education.

(6) Disciplinary history.

The IHP is set forth in these regulations. Housing assignments will be determined in a manner that will ensure that the safety, security, treatment, and rehabilitative needs of the inmate are considered, as well as the safety and security of the public, staff and institutions. Upon adoption of these regulations in 2007, the department will begin to update a computer tracking system to include the assignment of an Integrated Housing Code (IHC) as set forth in subsection (b) that will be used to identify each inmate's ability to integrate. On January 1, 2008, actual implementation of the IHP will

commence at designated facilities. On January 1, 2009, the IHP will begin to be implemented at all remaining institutions.

(a) The department's housing protocol will require male inmates to be housed in an appropriate bed, based on each inmate's Integrated Housing Code (IHC) and/or individual case factors. The department will utilize a computer tracking system to identify, track, and monitor an inmate's eligibility to integrate when being housed.

(b) Based on a review of an inmate's individual case factors and a personal interview with an inmate, an IHC will be assigned. The appropriateness of an inmate's IHC will be assessed at least at an inmate's Annual Review, or as case factors may change, and adjusted as necessary. An IHC that may be assigned are detailed as follows:

(1) RE, Racially Eligible. An inmate that has not been a victim or perpetrator of a racially motivated crime and can live with members of any race. It is the expectation of the department that all inmates will be coded RE, unless certain case factors dictate otherwise.

(2) RP, Restricted Partially. An inmate that may be considered ineligible to live with inmates of a particular race. Ineligibility to live with someone of another race could be based on a racially motivated incident, where racial beliefs or attitudes were the cause of the incident.

(3) RO, Restricted to Own (Race). An inmate that has been the victim and/or perpetrator of a racially motivated crime. Inmates who are coded RO Restricted to Own will not be precluded from integration in other aspects of institutional operation,

such as a school or work assignment. Inmates coded as RO are not precluded from racially integrated housing for the entire duration of their sentence.

(4) RT, Restricted Temporarily by Custody. Inmates with insufficient information or documentation for the designated custody supervisor to make an objective determination shall be coded RT for Restricted Temporarily Restricted by Custody. This code may be used when conflicting information arrives with the inmate or when questionable statements or behavior by the inmate are observed that are not consistent with the inmate's claim of eligibility.

(5) RR, Restricted by Refusal. Inmate is otherwise eligible for integrated housing but refuses to participate. Refusal to accept an integrated housing assignment, when all available documentation and information does not preclude such, shall result in disciplinary action with the potential to be housed in alternative and more restrictive housing, such as an Administrative Segregation Unit (ASU) or a Security Housing Unit (SHU).

(c) Inmates arriving in a facility Receiving and Release will be interviewed in accordance with the established process for intake. The designated custody supervisor will use the information provided during the interview as well as the supporting documents received to determine the inmate's eligibility for an integrated housing assignment.

(d) New arrivals at a facility or inmates who require a bed assignment change will be housed in the first available and appropriate bed, taking into consideration all relevant

case factors. Staff will also consider other available information that would indicate or present an immediate risk or safety concern for the inmate such as, but not limited to:

(1) Security issues including ASU placement.

(2) SHU.

(3) Request for Protective Custody.

(4) Prison gang or disruptive group affiliation or association.

(5) Medical or mental health issues.

(6) Length of term.

(7) Height, weight, and age.

Staff will continue to ensure that current housing policies regarding special category inmates covered under specific litigation remain in place during the housing process.

(e) If an inmate refuses to be housed in appropriately determined housing, he shall be subject to the disciplinary process, with the potential to be housed in alternative and more restrictive housing. Refusal to participate will result in the issuance of a Rules Violation Report (RVR) for Conduct, section 3005(c), Obeying Orders, for the Specific Act of Willfully Resisting, Delaying, or Obstructing any Peace Officer in the Performance of Duty (CCR subsection 3323(f)(6)), and shall be considered after the first RVR for placement in more restrictive housing such as an ASU or a SHU. At any time during this process the inmate may elect to participate in the IHP.

(f) Disciplinary restrictions will be applied as a result of a disciplinary process where inmates are afforded due process. The suspension of privileges based on a finding of guilt in a disciplinary hearing shall be assessed as set for the in CCR subsections 3315(f)(5)(M)1. and (M) 2.

(g) In the event that facility management determines that a temporary suspension of assignments within a unit to integrated beds is warranted, the Warden or designee shall request approval from their mission based Associate Director for a temporary suspension of integrated housing assignments consistent with the lockdown and modified program. Regular housing assignment procedures shall be resumed in accordance with the Integrated Housing policy upon resolution of the incident.

**NOTE: Authority cited: Section 5058, Penal Code. Reference: 5054, Penal Code; *Johnson v. California* (2005) 543 U.S. 499 [125 S. Ct. 1141], remand of *Johnson v. California*, (9<sup>th</sup> Cir. 2007) [Dock. No. CV 95-1192 CBM(BQR)].**

**§ 3315. Serious Rule Violations.**

**Subsections 3315(a) through 3315(f)(5)(L)2. remain unchanged. Subsections 3315(f)(5)(M)1. and 2. are adopted to read:**

(M) Violation of Refusing to Accept Assigned Housing of sections 3005(c) and 3269.1 shall result in:

1. First offense violation shall result in loss of any or all of the following for up to 90 days: canteen, appliances, vendor packages, telephone privileges, and personal property.

2. Second offense and subsequent offense violation(s) shall result in loss of any or all of the following for up to 180 days: canteen, appliances, vendor packages, telephone privileges, and personal property.

**Subsection 3315(g) remains unchanged.**

**NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 295–300.3, 314, 530, 532, 646.9, 647, 653m, 2931, 2932, 2933, 4573.6, 5054, 5068 and 12020, Penal Code.**

**Subsections 3341.5(a) through 3341.5(c)(9)(K) remain unchanged.**

**Subsection 3341.5(c)(9)(L) is adopted to read:**

<u>TYPICAL Term (Mos)</u>			
OFFENSE	Low	Expected	High
<u>(L) Refusal to <b>Accept Assigned Housing</b></u>	<u>(03</u>	<u>06</u>	<u>09)</u>

**Existing subsections 3341.5(c)(9)(L) through 3341.5(c)(9)(M) are renumbered to 3341.5(c)(9)(M) through 3341.5(c)(9)(N) respectively and remain unchanged.**

~~(M)~~ Except as otherwise specified in this section, proven attempts to commit any of the above listed offenses shall receive one-half (1/2) of the term specified for that offense.

~~(N)~~ Any inmate who conspires to commit any of the offenses above shall receive the term specified for that offense.

**Subsections 3341.5(c)(10) through 3341.5(c)(10)(B) remain unchanged.**

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 314, 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; and *Castillo v. Alameida, et al.*, (N.D. Cal., No. C94-2847).